

**VIRGINIA:**

**IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN RE:      Zee Investments, LLC  
              Main Street Truck Stop Sewage Treatment Plant**

**ORDER**

This cause came to be heard on June 7, 2019, in the Department of Environmental Quality's Northern Regional Office, in Woodbridge, Virginia.

Pursuant to § 10.1-1186 of the Code of Virginia, the Director of the Department of Environmental Quality ("DEQ") has the authority to issue special orders that may include injunctive relief and civil penalties.

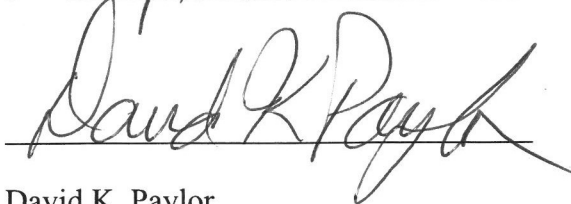
I have reviewed the Record, Exhibits, and the Presiding Officer's Recommended Findings of Fact and Conclusions of Law in the above-referenced matter. Accordingly, I adopt those Recommended Findings of Fact and Conclusions of Law and incorporate them into this Order.

Pursuant to my authority under Va. Code § 10.1-1186, I order Zee Investments, LLC to pay a civil penalty in the total sum of **Ten Thousand Dollars (\$10,000)** within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The duration of this Order shall be twelve months from the date that it is entered.

Enter this order this 3 day of September, 2019

A handwritten signature in black ink, appearing to read "David K. Paylor", written over a horizontal line.

David K. Paylor  
Director, Department of Environmental Quality

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#### **RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **I.        Preliminary Statement**

This case concerns whether Zee Investments, LLC (“Zee”) violated certain provisions of the State Water Control Law, Va. Code §§ 62.1-44.2 et seq. and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9 VAC 25-31-10 et seq., at the Main Street Truck Stop Sewage Treatment Plan (the “Facility”), located at 43083 John Mosby Highway in Chantilly, Virginia. Also at issue is whether a civil penalty is warranted for the alleged violations.

On June 7, 2019, DEQ staff held a Special Order Proceeding (the “Proceeding”) in this matter pursuant to Va. Code §§ 2.2-4019 and 10.1-1186. The Proceeding took place in Woodbridge, Virginia, at the Department of Environmental Quality (“DEQ”) Northern Regional Office (“NRO”). Mr. Asim Ghani and Ms. Monica Ghani appeared at the Proceeding on behalf of Zee, but Zee was not represented by counsel.

Attached are a recording of the Proceeding and the exhibits numbered as they were received. The exhibits include a copy of the May 9, 2019 Notice of Special Order Proceeding and June 3, 2019 reminder letter. DEQ Exh. 17. Mr. and Ms. Ghani did not object to the introduction into the record of the DEQ Exhibit Book, containing DEQ Exhibits 1-14, or the additional exhibits introduced by DEQ during the Proceedings, labeled as DEQ Exhibits 15-17. Mr. and Ms. Ghani were provided copies of the DEQ exhibits during the Proceeding. DEQ called two witnesses during the Proceeding: Edward Stuart, NRO Water Compliance Manager; and James (Jim) Datko, NRO Enforcement Specialist. The Presiding Officer left the record for the Proceeding open until June 21, 2019 to allow Zee to submit compliance documentation. However, Zee did not submit any additional documentation after the Proceeding.

##### **II.       Findings of Fact**

###### **Jurisdiction and Venue**

1. Zee owns the Facility located at 43083 John Mosby Highway in Chantilly, Virginia. DEQ Exh. 15; Testimony of Edward Stuart. Zee purchased the Facility on August 27, 2010. DEQ Exh. 15; Testimony of Edward Stuart.
2. The Facility is located within the part of the Commonwealth administered by DEQ’s NRO. Testimony of Edward Stuart.

3. The State Water Control Law and VPDES Permit Regulation prohibit discharges of sewage to state waters without a permit or certificate issued by the State Water Control Board. Va. Code § 62.1-44.15; 9 VAC 25-31-50; Testimony of Edward Stuart.

#### Responsible Party

4. Currently, Zee is an active limited liability company ("LLC") registered with the Virginia State Corporation Commission ("SCC"). DEQ Exh. 1; Testimony of Edward Stuart.
5. However, Zee was previously cancelled by the SCC on November 30, 2013 for failure to pay fees and was reinstated on July 23, 2015. DEQ Exh. 1; Testimony of Edward Stuart.
6. The events at issue in the Proceeding occurred during the period of Zee's cancellation. DEQ Exh. 1; Testimony of Edward Stuart. Therefore, prior to reinstatement of the LLC, DEQ treated Mr. Ghani as the responsible party. Testimony of Edward Stuart.
7. Pursuant to Va. Code § 13.1-1050.4, once the SCC reinstated Zee on July 23, 2015, "the existence of the LLC shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the LLC or a member, manager, or other agent after the cancellation and before the reinstatement is determined as if cancellation of the LLC's existence had never occurred."

#### Unpermitted Discharges

8. Neither DEQ nor the State Water Control Board has ever issued permit coverage to Zee for discharges of sewage or other wastes from the Facility. Testimony of Edward Stuart. A previous owner of the Facility, Mr. Hyun Kim, had VPDES permit coverage for discharges of sewage from the Facility. Testimony of Edward Stuart; DEQ Exh. 2 and 15. Upon transfer of ownership of the Facility to Zee in 2010, permit coverage for the Facility did not automatically transfer to Zee. Testimony of Edward Stuart. DEQ notified Zee on February 3, 2011 that permit coverage had not been transferred to Zee as required. Testimony of Edward Stuart; DEQ Exh. 3.
9. The sewage coming from the Facility originated from the septic tanks for the Main Street Truck Stop and an adjacent house. Testimony of Edward Stuart.
10. During DEQ inspections of the Facility on November 18, 2014, December 3, 2014, December 10, 2014, December 23, 2014; January 30, 2015; March 25, 2015; April 14, 2015; May 15, 2015; and May 28, 2015; DEQ staff observed untreated sewage from the Facility ponding on the ground and entering an unnamed tributary of Elklick Run. Testimony of Edward Stuart; DEQ Exh. 4, 5, 7, 9, 10, and 12.
11. At the time of the DEQ inspections from November 2014 through May 2015, Zee did not have a maintenance contract in place for the operation of the sewage treatment plant, and the sewage treatment plant was nonfunctional and incapable of providing treatment. Testimony of Edward Stuart. If Zee had obtained coverage under the VPDES General Permit for Domestic Sewage Discharges Less than or Equal to 1,000 Gallons Per Day, the permit would have required Zee to have a maintenance contract in place for the

operation of the sewage treatment plant, and to keep the sewage treatment plant in functional condition to provide adequate treatment. Testimony of Edward Stuart.

12. In addition to unpermitted sewage discharges, DEQ staff observed broken and deteriorating bags of “road salt” and other wastes located next to the receiving stream for the Facility and entering state waters during the DEQ inspections from November 2014 through May 2015. Testimony of Edward Stuart; DEQ Exh. 4, 5, 7, 9, 10, and 12.
13. Va. Code § 62.1-44.15 states, “except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
14. The VPDES Permit Regulation at 9 VAC 25-31-50 states, “except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.”
15. A January 23, 2015 Warning Letter and April 15, 2015 Notice of Violation addressed the discharges from the Facility to state waters.<sup>1</sup> Testimony of Edward Stuart; DEQ Exh. 6 and 11.
16. During the Proceeding, Mr. Ghani contended that Zee was unaware that there was a sewage treatment plant at the Main Street Truck Stop when Zee purchased the Facility in 2010. Testimony of Asim Ghani. However, on February 3, 2011, DEQ sent a letter to Zee, stating, “DEQ has received notification that you are now the current owner of the aforementioned property [at 43083 John Mosby Highway—Loudoun County] and subsequent sewage treatment system. Coverage under the above General Permit for your sewage discharge system has not been transferred to your name as required.” DEQ Exh. 3. Thus, Zee was informed of the presence of the sewage treatment system several years prior to the Facility’s unpermitted discharges at issue here.
17. Zee has taken corrective actions to address the unpermitted discharges to DEQ’s satisfaction. Testimony of Edward Stuart; DEQ Exh. 13.

#### Calculation of Civil Penalty

18. Jim Datko explained how the penalty was calculated for Zee, using the VPDES Civil Charge/Civil Penalty Worksheet (the “Worksheet”) included in DEQ’s Civil Enforcement Manual. Testimony of Jim Datko; DEQ Exh. 14. This worksheet is used throughout the Commonwealth to calculate civil charges and civil penalties for VPDES violations. Testimony of Jim Datko; DEQ Exh. 14.
19. A total civil penalty of \$12,600 was calculated for Zee on the Worksheet. Testimony of Jim Datko; DEQ Exh. 14.

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<sup>1</sup> Although the Warning Letter and Notice of Violation cite to permit requirements, Zee did not have permit coverage. However, the observations listed in the Warning Letter and Notice of Violation were accurate.

20. Six occurrences were assessed on line 1(a)(4) of the Worksheet for unpermitted discharges observed on six separate occasions by DEQ staff. Testimony of Jim Datko; DEQ Exh. 14. The potential for harm was assessed as marginal due to the quantity of discharge. Testimony of Jim Datko; DEQ Exh. 14. This resulted in a subtotal of \$7,800. DEQ Exh. 14.
21. The culpability was assessed as serious because there was no evidence of Zee attempting to operate the Facility in any way to prevent the sewage from reaching state waters, and because of Zee's level of control over the events constituting the violations. Testimony of Jim Datko; DEQ Exh. 14. This resulted in an additional penalty of \$3,900. Testimony of Jim Datko; DEQ Exh. 14.
22. On line 2, an economic benefit of \$900 was estimated for the cost of pump and haul on six occasions at \$150 per occasion. Testimony of Jim Datko; DEQ Exh. 14.
23. Penalties for Zee's violations have not been assessed previously in any order or case decision. Testimony of Jim Datko.
24. Penalties in orders issued under Va. Code § 10.1-1186 are limited to \$10,000. Va. Code §§ 10.1-1182, 10.1-1186.
25. A civil penalty of \$10,000 is appropriate to address Zee's violations in this case.

### **III. Conclusions of Law**

1. Zee is a "person" under Va. Code § 62.1-44.34:8 and 9 VAC 25-31-10.
2. DEQ's NRO is an appropriate venue for the Proceeding.
3. Zee discharged untreated sewage and other wastes from the Facility to state waters without a permit from the State Water Control Board, in violation of Va. Code § 62.1-44.15 and 9 VAC 25-31-50.

### **IV. Recommended Relief**

I recommend that the Director issue a Special Order pursuant to Va. Code § 10.1-1186 to require that Zee pay a civil penalty of \$10,000.

Respectfully submitted,



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Russell F. Deppe  
Enforcement Specialist  
Presiding Officer